

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF**

ORIGINAL
75-4226

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 75-4226

PARSAM SRI THAKUR and
VELLAMA SRI THAKUR,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

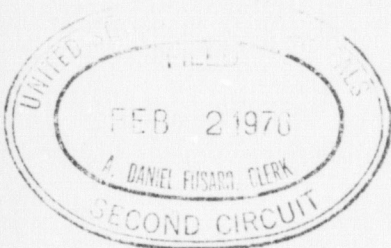
Respondent.

On Petition for Review of Deportation Order

BRIEF AND APPENDIX FOR PETITIONERS

EDITH LOWENSTEIN
Attorney for Petitioners
36 West 44th Street
New York, N.Y. 10036
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United States Attorney for
the Southern District of
New York
Attorney for Respondent
1 St. Andrews Plaza
New York, N. Y.



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3552

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ORDER OF THE IMMIGRATION JUDGE DENYING

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 75-4226

PARSAM SRI THAKUR and
VELLAMA SRI THAKUR,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

On Petition for Review of Deportation Order

BRIEF FOR PETITIONERS

This is a petition for review under §106(a) Immigration and Nationality Act (8 U.S.C. 1105a) by the petitioners PARSAM SRI THAKUR and VELLAMA SRI THAKUR, of the order by the Board of Immigration Appeals, dated September 29, 1975 in which said Board affirmed the decision of the Immigration Judge denying the petitioners'

Motion to Reopen and to Extend their Voluntary Departure Date.

QUESTIONS PRESENTED

- 1) Whether the administrative record as certified by the government permits adequate review of the case.
- 2) Whether the denial of extension of voluntary departure represents an arbitrary and capricious exercise of discretion.

STATEMENT OF FACTS*

The petitioners are natives and citizens of Guyana and the parents of three children, one of whom was born in the United States three years ago.

*Some of the facts related here do not appear in the "Record of the Proceedings" as certified by the government and reflected in the Joint Appendix. The Immigration Record File contains additional material which should have been included in the Record of the Proceedings, which, without such material is non-factual. Among the material not included is an affidavit prepared by petitioner PARSAM SRI THAKUR and the original denial of the extension of the student status, both of which are essential to give proper perspective to the case. The above facts are taken from said affidavit prepared by the petitioner.

The petitioner, PARSAM SRI THAKUR, first came to the United States as a student in September, 1960. He received a B.A. degree from the University of Wisconsin in January, 1964, an M.A. degree from North Colorado University in September, 1964. He then left the United States and taught school in Canada and Guyana.

In 1970 he returned to the United States and enrolled at New York University for graduate studies.

In 1974, shortly before he had completed his studies, the Immigration Service denied his application for extension of student status, among other reasons because he had placed himself on the immigration visa waiting list October 29, 1973. It is questioned whether the denial was justified. However the petitioner was permitted to complete his studies and he received a Ph.D. degree from New York University in June, 1975.

He asked for permission to remain in the United States for practical training which ordinarily is considered part of the student's education. The Service denied further extensions. In the absence of practical training the petitioner's extreme effort to achieve higher education may have been futile.

There is no question that the developments in this case caused the petitioner extreme anxiety and it is against this background that the Petition for Review was filed.

STATUTE INVOLVED

Immigration and Nationality Act as Amended

Sec. 244(e) (8 U.S.C. 1254(e))

Suspension of Deportation; Voluntary Departure

* * *

Sec. 244(e) The Attorney General may, in his discretion, permit any alien under deportation proceedings, other than an alien within the provisions of paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) (and also any alien within the purview of such paragraphs if he is also within the provisions of paragraph (2) of subsection (a) of this section), to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection.

THE ARGUMENT

I

The Certified Record in Its Present Form Does Not Do Justice to the Equities in the Case.

The Certified Record begins with the Order to Show Cause which is dated February 10, 1975. It alleges that the petitioners had been authorized to remain in the United States until November 15, 1974 and that they remained thereafter without authority. (A-13)

At the hearing before the Immigration Judge on February 27, 1975 the petitioners appeared without counsel and admitted deportability. The application for extension of student status had been denied on November 5, 1974. It is believed that this denial could have been questioned by the petitioners at the time it took place, but also at the time of the deportation hearing. It therefore should be part of the administrative record and is appended to this brief as Exh. 1, since the petitioner's deportability was based on this denial and the denial may have been in error.

Having admitted deportability, the Immigration Judge had pity on the petitioners and with the consent of the Trial Attorney gave the departure date of June, 1975. (App. 9). Thereafter, the record shows the petitioners did retain counsel and such counsel, without giving substantial reasons for the request, asked for an extension of the voluntary departure date by the Immigration Judge. (A-4, A-5)

The Immigration Judge states that there were no compelling reasons shown for the petitioners' failure to depart. This must be admitted, but while the reasons were not shown, they existed and it was not the petitioners' fault, but that of their counsel that the reasons were not sufficiently given.

The appeal again did not bring out the agony of this case and on the basis of the Record, the per curiam decision of the Board was inevitable.

It is respectfully submitted, that as the Board of Immigration Appeals was deprived of all essential facts in this case, so this Court, on the basis of the Certified Record in its present form, is deprived of all essential facts.

The condition of the Record illustrates the inherent weakness of a system in which the respondent is permitted to select material from its record without permitting the petitioner the same privilege.

II

Denial of Voluntary Departure Under the Circumstances of this Case is Arbitrary and Capricious.

Review of the Denial of Voluntary Departure is within the framework of this petition for review. 8 C.F.R. §242.17(b); Jack Wasserman, On Immigration Law and Practice, 2nd ed. p.292 and cases cited there.

In the exercise of administrative discretion all aspects of the case should be taken into consideration. Here the sole unfavorable aspect is the petitioners' failure to depart when requested. On the other hand the denial of his student status may have been in error and the petitioner spent the overstayed time in the United States completing his studies. He has a United States citizen child. He is statutorially eligible for voluntary departure, being a person of good moral character and having

the means and the desire to depart. The chief motivation on part of the respondent in denying voluntary departure is to penalize the petitioner for his overstay.

Sec. 244(e) is available to aliens such as the petitioner and his family. When he was in the United States the first time he complied with the conditions of his admission. The second time in the United States he failed to depart within the time allotted, but he had a valid reason for not having left. Bartsch v. Watkins, 175 F.2d 245 (2d Cir. 1949).

Administrative discretion must be flexible. Favorable factors in individual cases may justify a grant of relief. Matter of T., 5 IN 736 (1954); Matter of S., 6 IN 692 (A.G. 1955).

Here the equity aspects are substantial. If analyzed from the point of view of alternatives, the petitioners' remaining in the United States was beneficial to his career and to his employer. His departure would have had adverse results. He did not at any time hide out from the Service. He did not make fraudulent statements. He utilized the existing law for his purposes. Had at some

time after he obtained his degree he applied for a temporary worker's permit (H-1) he might have been able to remain in the United States lawfully. He was unaware of that possibility. He did seek the advice of counsel and acted upon this advice.

CONCLUSION

For the foregoing reasons voluntary departure should be restored to him.

Respectfully submitted,

EDITH LOWENSTEIN
Counsel for Petitioner

Exhibit 1

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

File No.: ALPHA

Date: 11/5/74

PARSRAM SRI THAKUR
564 7TH AVE.
BROOKLYN, N.Y. 11215

PLEASE NOTE THE ITEM OR ITEMS CHECKED ☒ BELOW WITH REGARD TO YOUR APPLICATION.

1. ☒ Upon consideration, it is ordered that your application for extension of temporary stay be denied for the following reason:
 - a. ☒ You have failed to establish that you intend to depart from the United States within a definite time.
 - b. ☒ You have failed to establish that you have a residence abroad to which you intend to return.
 - c. ☒ You have failed to establish that you can financially maintain yourself as a bona fide nonimmigrant.
 - d. ☒ You have failed to establish that the purpose for which you were admitted has not been accomplished and that your requested extension is not merely an attempt to prolong your stay indefinitely.
 - e. ☐ You have violated your nonimmigrant status by accepting unauthorized employment in the United States.
 - f. ☒ YOU HAVE APPLIED FOR AN IMMIGRANT VISA! YOU HAVE NO INTENTION OF RETURNING TO GUYANA.
2. ☒ It will be necessary for you to depart from the United States not later than NOVEMBER 15, 1974. You must notify this office before that date of the arrangements you have made to effect your departure, including the date, place and manner of departure. USE THE ENCLOSED SELF-ADDRESSED CARD TO NOTIFY THIS OFFICE REGARDING DEPARTURE ARRANGEMENTS. POSTAGE IS NOT REQUIRED. At the time of your departure, do not fail to surrender Form I-94, ARRIVAL-DEPARTURE RECORD, in accordance with instructions on that form.
3. ☒ Upon consideration, it is ordered that your application as a nonimmigrant student for permission to engage in employment be denied for the following reason: YOU HAVE BEEN A STUDENT IN THE U.S. SINCE 1970. SINCE 1971, DESPITE THE FACT THAT A STUDENT VISA WOULD NOT HAVE BEEN ISSUED TO YOU UNLESS YOU COULD PROVE THAT YOU COULD SUPPORT YOURSELF YOU HAVE BEEN EMPLOYED. IN ADDITION, IT APPEARS THAT THREE OTHER MEMBERS OF YOUR FAMILY ENTERED THE U.S. ONLY *
4. ☐ Upon consideration, it is ordered that your application for school transfer be denied for the following reason:
* FOUR MONTHS AFTER YOU "PROVED" SUPPORT. THE JOB AT LABOUREDIA COMMUNITY COLLEGE IS ONE WHICH MANY U.S. CITIZENS, RESIDENTS AND TAXPAYERS, NEED IN THIS PERIOD OF HIGH UNEMPLOYMENT.

Enclosures: ☒ Form I-94
☐ Your Passport
☐

Very truly yours,

Maurice J. Kelly
DISTRICT DIRECTOR

A P P E N D I X

INDEX TO ADMINISTRATIVE RECORD

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - -x

PARSAM SRI THAKUR and
VILLAMA SRI THAKUR,

Petitioners,

- v -

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent. :

:

:

: PETITION FOR REVIEW OF
ADMINISTRATIVE AGENCY
: ACTION

: Docket No. 75-4226

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1. Decision of the Board of Immigration
Appeals dated September 29, 1975.

2. Notice of appeal to the Board of Immigration Appeals dated August 26, 1975 with motion to reopen deportation proceedings to grant voluntary departure.

3. Order of the Immigration Judge denying motion to reopen dated August 19, 1975.

4. Service brief in opposition to motion to reopen proceedings dated July 16, 1975.

5. Motion to reopen deportation proceedings by petitioner's attorney dated June 18, 1975.

6. Letter to Immigration and Naturalization Service from petitioner dated June 18, 1975.

7. Notice of entry of appearance as attorney dated June 24, 1975.

8. Notice of extended voluntary departure
denied dated June 3, 1975.

9. Decision of the Immigration Judge dated
February 27, 1975.

10. Transcript of deportation hearing held
on February 27, 1975.

11. Order to show cause dated February 10,
1975.

Respectfully submitted,

THOMAS J. CAHILL,
United States Attorney for the
Southern District of New York,
Attorney for Respondent.

MARY P. MAGUIRE,
Special Assistant United States Attorney,
Of Counsel.

DECISION OF THE BOARD OF IMMIGRATION APPEALS

United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

Files: A19 449 469 - New York
A20 802 773

SEP 29 1965

In re: PARSRAM SRI THAKUR
VELLAMA SRI THAKUR

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Ira Ehrlich, Esquire
21 E. 40th Street
New York, New York 10016

ON BEHALF OF I&N SERVICE: Alexander Schonfeld
Trial Attorney

CHARGES:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2)) - Nonimmigrants -
remained longer

APPLICATION: Voluntary departure

ORDER:

PER CURIAM. The decision of the immigration judge
is affirmed. The appeal accordingly is dismissed.
Oral argument is denied.

Chairman

ORDER OF THE IMMIGRATION JUDGE DENYING
MOTION TO REOPEN

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

AUG 19 1975

-----	:	File: A19 449 469 - A20 802 773 - New York
In the Matter of	:	
	:	
Deportation Proceedings:	:	In Behalf of Respondents: Ira Ehrlich, Esq.
	:	21 East 40th Street
against	:	New York, N.Y. 10016
	:	
PARSRAM SRI THAKUR	:	In Behalf of Service: Alexander Schonfeld, Esq.
	:	Trial Attorney
and	:	New York, New York
	:	
VELLAMA SRI THAKUR	:	
	:	
- Respondents -	:	
-----	:	

ORDER DENYING MOTION TO REOPEN

At hearing held on February 27, 1975 the respondents, who are husband and wife, were found deportable and granted until June 27, 1975 to depart voluntarily to enable the male respondent to complete a course of study by that date. It was further ordered that upon their failure to depart when required that they be deported to Guyana. No appeal was taken from that decision. A request for an extension of departure time was denied by the District Director on June 3, 1975.

In this motion respondents request that the proceedings be stayed and deportation hearing be reopened to grant them *voluntary departure* in order to enable the male respondent to complete practical training as a Psychologist. The motion is opposed by the Trial Attorney, who has questioned the benefits of the male respondent's intention to depart at the original deportation

Order of the Immigration Judge Denying
Motion to Reopen

A-5

hearing.

The respondents were granted a period of 4 months to effect departure at the original deportation hearing. Their request for an extension of departure time has been denied by the District Director. They have shown no compelling reason or circumstance for their failure to depart within the time originally granted. Hence their application lacks merit and the motion will be denied in all respects.

ORDER: IT IS ORDERED that the motion to reopen proceedings and for a stay is hereby denied.

Henry I. Millman

HENRY I. MILLMAN
Immigration Judge

SERVICE BRIEF IN OPPOSITION TO MOTION
TO REOPEN PROCEEDINGS

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

In the Matter of
Parsram Sri Thakur
Respondent

File No. A19 449 469

IN DEPORTATION PROCEEDINGS

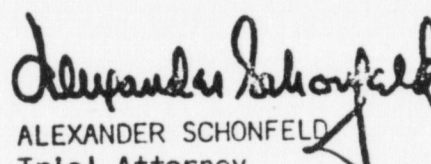
IN BEHALF OF RESPONDENT:

Ira Ehlich, Esquire
21 East 40th Street
New York, New York

BRIEF IN OPPOSITION

The motion to reopen is opposed. Respondent, at the time he testified at his deportation hearing, agreed to leave the United States on or before June 27, 1975. It is inconceivable that at this hearing he was not aware that he would require practical training. The only conclusion therefore in the light of his present request, is that he never intended to leave.

This motion must be denied.


ALEXANDER SCHONFELD
Trial Attorney
New York District

July 16, 1975.

LETTER TO IMMIGRATION AND NATURALIZATION
SERVICE FROM PETITIONER

June 18, 1975

Immigration Service
20 West Broadway
New York City, N.Y.

Re: Parsram Sri THAKUR
and wife:
Vellema Sri THAKUR

A 20802773

A 20802773

Dear Sirs:

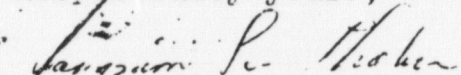
I respectfully request a new grant of Voluntary Departure. The compelling reason for requesting such time is that I now completed my Doctorate course in Educational Psychology and I presently need practical training in my specialty. Such supervised practical training is not available in my country, Guyana.

If I am compelled to depart at present I would only be compelled to return to the United States for such training in the future.

The practical training time is one year. Without such practical training I cannot receive a Licence as a Psychologist.

I respectfully request that my departure be stayed to allow the granting of a new Voluntary Departure. My departure is not the subject of any judicial proceeding.

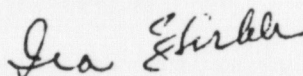
Respectfully yours,



PARSRAM SRI THAKUR

SWORN TO BEFORE ME

The 18 Day of JUNE 1975



IRA EHRLICH
NOTARY PUBLIC, State of New York
No. 24-1085000

DECISION OF THE IMMIGRATION JUDGEFile No. A 19 449 469

UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

SRI, THAKUR PARSRAM

In Deportation Proceedings Under Section 242
of the Immigration and Nationality ActDECISION OF THE
IMMIGRATION JUDGE

Respondent.

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the Order to Show Cause.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of deportation respondent be granted voluntary departure without expense to the Government on or before June 27, 1975
(Date)

or any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to Guyana on the charge(s) contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to _____

Copy of this decision has been served on respondent.

Appeal: ~~Waived-reserved~~

Date: 7/27/75Place: NYC

FINAL ORDER

FEB 27 1975

TRANSCRIPT OF DEPORTATION HEARING

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

THAKUR PARSRAM SRI &
THAKUR VELLAMA SRIFILE A- 20 802 773 &
19 449 469

IN DEPORTATION (MASH) PROCEEDINGS

TRANSCRIPT OF HEARING

Before: Joseph J. Mack, Immigration Judge

Date: February 27, 1975 Place: New York

Transcribed by Martha Pastor Recorded by IBM Dictaphone

Official Interpreter No one.

Language ENGLISH

APPEARANCES:

For the Service:

John K. Speer

Trial Attorney

Trial Attorney

Station

For the Respondent:

No. One

HEARING FEBRUARY 27, 1975 A. 20 802 773 & A. 19 449 469.

1 MR. SPEER: THAKUR VELLAMA SRI, THAKUR PARSRAM SRI, NUMBERED RESPECTIVELY:
2 A. 20 802 773, A. 19 449 469. Both English language and neither represen-
3 ted by counsel. Government has had an opportunity to discuss this case
4 informally with the respondents.

5
6 IMMIGRATION JUDGE TO RESPONDENTS:

7 Q. Your names are?

8 FEMALE RESPONDENT:

9 A. Vellama Thakur Sri.

10 Q. And your name sir?

11 A. Parsram Thakur Sri.

12 IMMIGRATION JUDGE: Now you both speak and understand English, is that
13 correct?

14 A. Yes sir.

15 FEMALE RESPONDENT:

16 A. Yes.

17 IMMIGRATION JUDGE: And you both wish to speak for yourselves at this
18 hearing?

19 A. Yes we do.

20 FEMALE RESPONDENT:

21 A. Yes.

22 IMMIGRATION JUDGE: You both admit that you are not citizens or nationals
23 of the United States?

24 A. Yes we do.

25 FEMALE RESPONDENT:

26 A. Yes.

-1-
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 IMMIGRATION JUDGE: You both natives and citizens of Guyana?

2 A. Yes sir.

3 FEMALE RESPONDENT:

4 A. Yes.

5 IMMIGRATION JUDGE: Now you entered the United States Mr. Sri, on or about
6 September 2, 1970?

7 A. Yes sir.

8 Q. You came in at Puerto Rico?

9 IMMIGRATION JUDGE TO FEMALE RESPONDENT:

10 Q. And you entered the United States at the city of New York on
11 June 16, 1971?

12 A. That is correct.

13 Q. You were admitted as a student and you were admitted as a wife
14 of a student?

15 FEMALE RESPONDENT:

16 A. Yes.

17 IMMIGRATION JUDGE: And you both were permitted to remain in the United
18 States until November 15, 1974, is that right?

19 A. Yes, judge.

20 IMMIGRATION JUDGE: And you remained here after that date without permis-
21 sion?

22 FEMALE RESPONDENT:

23 A. Yes, your honor.

24 IMMIGRATION JUDGE: You know that under the circumstances you are both
25 illegally in the United States?

26 FEMALE RESPONDENT:

-2-
TRANSCRIPT OF HEARING

1 A. Yes.

2 IMMIGRATION JUDGE: Now are you prepared to leave at your own expense

3 instead of being deported?

4 FEMALE RESPONDENT:

5 A. Yes, your honor.

6 IMMIGRATION JUDGE: And how soon are you prepared to leave?

7 MALE RESPONDENT:

8 A. At the present time sir, I'm finishing my education, the

9 University says that at the present rate of progress, June

10 should be a reasonable date for me to complete my work.

11 Q. What school do you go to?

12 A. New York University.

13 Q. What are you studying for?

14 A. For the doctors degree.

15 Q. In what?

16 A. Educational psychology.

17 MR. SPEER: The government has been requested that they leave voluntarily.

18 IMMIGRATION JUDGE: June 27th.

19 MR. SPEER: Yes.

20 IMMIGRATION JUDGE TO RESPONDENTS: Here is my order. Your minor child will

21 leave with you?

22 FEMALE RESPONDENT: Yes sir, hereby certifying that I am the father of the child described in the foregoing order.

23

24

25

26

Marked for the father of the child described in the foregoing order.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

ORDER TO SHOW CAUSE

A-13

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. A19 449 469

In the Matter of **SRI, Thakur Parsram**

Respondent.

564 - 7th Avenue, Apt. 1L, Brooklyn, N.Y.

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

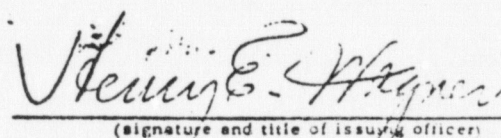
1. You are not a citizen or national of the United States;
2. You are a native of Guyana
and a citizen of Guyana;
3. You entered the United States at San Juan, Puerto Rico on
or about 9/2/70;
(date)
4. At that time you were admitted as a nonimmigrant student ~~visitor for temporary business~~ student
5. You have been authorized to remain in the United States until 11/15/74
6. You remained in the United States thereafter without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a) (15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 20 W. Broadway, New York, N.Y., 14th floor on February 27, 1975(S) at 8:45 a.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: **February 10, 1975**


(signature and title of issuing officer)

ASSISTANT DISTRICT DIRECTOR
FOR INVESTIGATIONS, N.Y., N.Y.

**APPEAR WITH PASSPORT AND
IMMIGRATION DOCUMENTS**

2

Copies Received

Date

February 2, 1976

Firm

Mr. Thomas J. Cahill

By

Pauline P. Groa